

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

BOARD OF MANAGERS OF 1111 S.)	
WABASH CONDOMINIUM ASSOCIATION,)	
)	No. 08 L 538
Plaintiff,)	
)	
v.)	Honorable Dennis J. Burke
)	
1111 SOUTH WABASH LLC, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter having come before the Court on July 8, 2009; the Court having considered the briefs and oral arguments in connection with Defendant Perkins, Pryde, Kennedy & Steevensz Architects, P.C.'s ("PPKS") Motion to Dismiss Count VII of Plaintiff's Second Amended Complaint pursuant to 735 ILCS § 5/2-615; the Court hereby enters the following Order:

IT IS HEREBY ORDERED THAT:

Defendant PPKS's Motion to Dismiss Count VII is GRANTED with prejudice. The implied warranty of habitability is a judicially created doctrine designed to avoid the unjust results of *caveat emptor* and the doctrine of merger. *VonHoldt v. Barba & Barba Constr., Inc.*, 175 Ill. 2d 426, 430 (1997). Moreover, the warranty of habitability is a creature of public policy and a judicial innovation that has evolved to protect purchasers of new houses upon discovery of latent defects in their homes. *Minton v. Richards Group*, 116 Ill. App. 3d 852, 854 (1st Dist. 1979). The implied warranty of habitability is a separate covenant between the vendor and vendee which arises because of the unusual dependent relationship. *Id.* While this warranty has roots in the execution of the contract for sale, it exists independently and privity of contract is not required. *Id.* The purpose of the warranty is to protect purchasers' expectations by holding building-vendors accountable. *Id.* Additionally, the purchaser of a new home has a cause of action against a builder-vendor for damages resulting from latent defects in the construction of the new home. *VonHoldt*, 175 Ill. 2d at 430, citing *Petersen v. Hubschman Constr. Co.*, 76 Ill. 2d 31, 39-40 (1979). "Since *Petersen*, Illinois courts have defined and extended the circumstances under which claims based on an implied warranty of habitability can be recognized. See *Park v. Sohn*, 89 Ill. 2d 453 (1982) (builder-vendor need not be mass producer, just one engaged in the business of building such that the sale is of a commercial nature); *McClure v. Sennstrom*, 267 Ill. App. 3d 277 (2d Dist. 1994) (house built upon foundation of an old house still qualified as a "new" home); *Hefler v. Wright*, 121 Ill. App. 3d 739 (5th Dist. 1984) (doctrine applies to person who erected a house manufactured by another

company and built on the plaintiff's land); *Briarcliffe West Townhouse Owners Ass'n v. Wiseman Construction Co.*, 118 Ill. App. 3d 163 (2d Dist. 1983) (latent defect in common land can affect habitability); *Minton v. Richards Group*, 116 Ill. App. 3d 852 (1st Dist. 1983) (innocent purchaser could bring an action against a subcontractor when he had no recourse to the builder-vendor and he had sustained a loss in his home due to a latent defect); *Tassan v. United Development Co.*, 88 Ill. App. 3d 581 (1st Dist. 1980) (doctrine applies against developer-seller of new condominium unit)." *Id.* at 431.

Plaintiff asks the Court to extend the implied warranty of habitability to Defendant PPKS as the architect that allegedly defectively designed the condominium building at issue. In asking the Court to extend the applicability of the implied warranty of habitability, Plaintiff relies extensively upon the *Minton* case. See 116 Ill. App. 3d 852 (1st Dist. 1979). In *Minton*, the plaintiff homeowners filed a complaint alleging that they contracted for the purchase of a new home to be constructed by the defendant Richard Group of Chicago ("RGC"). *Id.* at 853. Thereafter, RGC retained the defendant International Decorating, Inc. ("IDI") as a subcontractor to paint the eaves and windows of the plaintiffs' home. *Id.* The home as constructed was allegedly uninhabitable and the plaintiffs filed suit alleging violation of the implied warranty of habitability. *Id.* Thereafter, the defendant RGC, a Delaware corporation, was dissolved. *Id.* As a result of the defendant RGC's dissolution, the defendant IDI moved to strike the claim for breach of the implied warranty of habitability against it in the amended complaint. *Id.* The trial court granted the defendant IDI's Motion to Strike and granted the plaintiffs leave to file a second amended complaint. *Id.* at 853-54. The plaintiffs failed to file a second amended complaint and the trial court dismissed the case with prejudice. *Id.* at 854. The plaintiffs appealed. *Id.*

On appeal, the plaintiffs argued that the implied warranty of habitability against latent defects in a new house applicable to builder-vendors also applied to subcontractors where the builder-vendor is dissolved and shows no assets. *Id.* The appellate court agreed ruling that although the record disclosed no builder-vendor to vendee relationship between the plaintiffs and the defendant IDI, the court nonetheless determined that in the case "where the innocent purchaser has no recourse to the builder-vendor [because it is dissolved] and has sustained loss due to the faulty and latent defect in their new home caused by the subcontractor, the warranty of habitability applies to such subcontractor." *Id.* at 854-55. Specifically, the appellate court stated that:

"[p]urchasers from a builder-vendor depend upon his ability to construct and build a home of sound structure and his ability to hire subcontractors capable of building a home of sound structure. The plaintiffs here had no control over the choice of RGC to paint the eaves and windows of their home, and RGC was in the better position to know which subcontractor could perform the work adequately." (Internal citations omitted).


Id. at 854. As a result, the appellate court reversed the trial court's dismissal and remanded the case. *Id.* at 855.

Based upon the *Minton* court's rationale, Plaintiff asks the Court to extend the implied warranty of habitability to Defendant PPKS as the architect that allegedly defectively designed the underlying condominium building. Although the Court acknowledges the interesting and creative application by Plaintiff of *Minton* to the case at bar, the Court nonetheless finds that the extension of the implied warranty of habitability to Defendant PPKS as an architect would be in

contravention of Illinois law. First, Plaintiff has cited no cases, and the Court could not locate any cases, extending the implied warranty of habitability to an architect like Defendant PPKS. Moreover, although the *Minton* case clearly extends the protection of the implied warranty of habitability to subcontracts, the *Minton* case is devoid of any indication or innuendo that an architect of a new house or condominium building that performed no structural work on the building could be liable for breach of the implied warranty of habitability. Lastly, the purpose of the implied warranty of habitability is to protect purchasers' expectations by holding building-vendors accountable for latent defects in the construction of a new home. See *VonHoldt*, 175 Ill. 2d at 430. The Court could not locate any case law stating that an architect is accountable for latent defects in construction even if those defects resulted from a defective building design. Thus, although the Court finds Plaintiff's argument interesting and novel, the Court finds no legal authority to permit the extension of the implied warranty of habitability to Defendant PPKS in its role as the architect of the subject condominium building. Therefore, Defendant PPKS's 2-615 Motion to Dismiss Count VII is GRANTED with prejudice.

Moreover, Plaintiff's oral Motion for Rule 304(a) language is DENIED.

This case is set for further status on August 6, 2009, at 9:45 a.m.

Entered:  JUL 08 2009
Circuit Court - 1744

Judge Dennis J. Burke
Circuit Court of Cook County, Illinois
County Department, Law Division
Commercial Calendar "N"